IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 703 of 1994

Date of decision : July 18, 2007

Balwant Singh

... Petitioner

versus

State of Haryana

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Vivek Goel, Advocate
for the petitioner.

Mr. K.S. Godara, DAG, Haryana.

A.N. Jindal, J.

Judgment dated 27.10.1994 passed by the learned Additional Sessions Judge, Jind, dismissing the appeal of the accused-petitioner Balwant Singh (hereinafter referred to as 'the petitioner) against the judgment dated 5.6.1993 passed by the learned Chief Judicial Magistrate, Jind, convicting the petitioner under Sections 304-A/279 IPC and sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs.100/- under Section 304-A IPC and further to undergo rigorous imprisonment for three months and to pay fine of Rs.100/- under Section 279 IPC, has been assailed by way of the present revision petition.

In nut-shall, the facts of the case as unfolded by the prosecution during trial are that on 10.11.1990, at about 7.00 AM, when Shakti Singh complainant going for his work, he saw Kuldeep Singh son of Nafe Singh was coming on his bicycle. In the meanwhile, the petitioner, while driving bus No.HRV-4629, rashly and negligently, hit the cycle of Kuldeep Singh from behind. As such, Kuldeep Singh sustained grievous injuries and was removed to the hospital where he expired. On the statement Ex.PB of the complainant, FIR was registered at Police Station City, Jind. Investigation commenced. The investigating Officer got photographed the spot; collected the postmortem report; got the bus mechanically examined; recorded the statements of the witnesses; arrested the accused and completion of the

investigation was followed by the report under Section 173 Cr.P.C.

Formal charge under Section 304-A/279 IPC was framed against the petitioner which was denied by him and he opted for trial.

During trial, the prosecution examined HC Raghbir Singh (PW1), Shakti Singh complainant (PW2), Nafe Singh (PW3), Dr. Prem Kumar Gupta (PW4) and Raj Kumar (PW5).

In the statement under Section 313 Cr.P.C. the petitioner denied all the incriminating circumstances appearing against him and pleaded his false implication in the case. However, no evidence was led in defence.

The trial ended in conviction and the appeal filed by the petitioner was also dismissed. Hence this revision petition.

I have heard Mr. Vivek Goel, learned counsel for the petitioner, Mr. K.S. Godara, learned Deputy Advocate General, Haryana and perused records of this case with their able assistance.

The precise contentions, in order to assail the judgment advanced by the learned counsel for the petitioner are that the Investigating Officer has not been examined in the case; the complainant being father of the deceased was an interested witness and his testimony does not find corroboration from any independent source. While arguing that non examination of the investigating officer is fatal to the prosecution case, the learned counsel referred to the judgment delivered by the Apex Court in case ***Nageshwar Sh. Krishna Chobe vs. State of Maharashtra, AIR 1973, SC 165.***

Having deliberated over the aforesaid contentions, I find some substance in the same. I have the testimony of Shakti Singh complainant (PW2) alone to unfold the prosecution version, but the same does not find corroboration from any other source. The best evidence to corroborate the testimony of Shankti Singh complainant (PW2) could have been ASI Ram Kumar Investigating Officer, but surprisingly he was not examined.

Admittedly, there is no corroboration to the testimony of Shakti Singh who could be dubbed as an interested witness due to lack of corroboration. The Investigating Officer was the material witness to lend corroboration who had visited the place of occurrence; seen the skid marks of the tyres; prepared the site plan of the place of occurrence; got the place

of the occurrence and body photographed; examined the witnesses and made visual observations about the occurrence. He could explain the proceedings of every stage of the investigation. Thus, his non examination materially affects the case. Certainly, it has been invariably observed that the Investigating Officer being not an eye witness, his non examination could not be fatal to the prosecution, but, where corroboration is lacking and material documents including arrest of the accused, driving licence of the accused, disclosure statements, recoveries memos and the visual observations regarding position of vehicles at the spot are to be proved, then certainly, his testimony could be treated as important piece of evidence and in the absence of any other corroboration, his evidence could be given importance. In case ***Nageshwar Sh. Krishna Chobe vs. State of Maharashtra, AIR 1973, SC 165,*** cited by the learned counsel for the petitioner, has gone further, wherein the Apex Court while commenting upon the perfunctory investigation made by the Investigating Officer in case of accident, observed as under :-

> *"The Investigating Officer unfortunately did not care to have taken the photographs of the position of the vehicle, the electric pole and the persons injured and dead as a result of the accident. He did not care even to take the measurement of the height of the curve, which in our view, was a very relevant factor. Nor did he care to get the vehicle examined by a mechanic for the purpose of ascertaining if its mechanism was in order and particularly if its brakes were working properly. The rough sketch prepared by him is a highly unsatisfactory document as it only gives us an extremely rough idea of the position; this is of little assistance in determining the question of the appellant's guilt in the criminal trial."*

Instant case is on a better footing as the Investigating Officer was not examined in this case. Consequently, non examination of ASI Ram Kumar would amount to be a serious lapse/omission on the part of the prosecution. For want of him, major part of the investigation remained unproved. No plausible explanation has been given for with-holding his examination. Thus, the necessary inference is that the petitioner has to be

extended benefit on account of this serious lapse/omission on the part of the prosecution. Both the Courts below fell in error by ignoring the aforesaid aspects of the case, therefore, necessary interference in the impugned judgment has become inevitable.

For the foregoing reasons, the petition is accepted, the judgment of conviction and sentence is set aside and the petitioner is directed to be released forthwith. The amount of fine, if deposited by him, be refunded.

(A.N. Jindal)
Judge

July 18, 2007
deepak